



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Sierracin/Sylmar Corporation

File: B-258300.2

Date: April 20, 1995

William S. Brewer for the protester.
L. Stephen Quatannens, Esq., Gardner, Carton & Douglas, for
Texstars, Inc., an interested party.
Jerry Aldridge, Department of the Air Force, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency determination that protester was not an approved source and therefore ineligible for award is unobjectionable where the determination was based on accurate, current information, and the protester was afforded a reasonable opportunity to have its item approved.

DECISION

Sierracin/Sylmar Corporation protests the award of a contract to Texstars, Inc. under request for proposals (RFP) No. F42620-94-R-62019, issued by the Department of the Air Force for F-16 forward transparencies.¹ Sierracin argues that it has completed all of the tests required to be qualified as an approved source, and contends that the agency improperly denied it an award on the basis that it had not completed a 4- to 6-month engineering flight test that should not be performed until after award. Sierracin also asserts that its similar F-18 transparencies have been flight tested and that the agency should accept these test results and allow qualification based on its F-18 transparencies.

¹The F-16 transparencies comprise the major components of the F-16 canopy assemblies. When installed on the aircraft, the canopy provides a large aerodynamically shaped transparent enclosure for the cockpit. The forward transparencies are large, single piece, bubble shaped, self-contained units that are installed in the movable portion of the canopy.

We deny the protest.

When a delivery order, No. F42600-89-D-06580-0074, was issued to Lockheed Fort Worth Corporation, it contained a statement of work (SOW) dated September 3, 1991, which covered all requirements for interested sources to qualify on the F-16 transparencies. This SOW stated that the contractor should establish programs with firms that were seeking to qualify as approved sources and should provide a test plan for each firm. The SOW identified Swedlow, Inc. and Texstars, Inc. as the only sources that were seeking qualification. Sierracin subsequently sought to qualify. On June 16, 1992, the Air Force held a briefing at Sierracin's facility with representatives from Texstars, Pilkington Aerospace, and Sierracin to outline the initial tasks involved in qualification as an approved source on the new, upgraded, 550-knot F-16 transparency in an attempt to qualify at least two sources. Revision 1 of the SOW, issued on November 19, stated at section 3.2.2. that:

"The coating system shall be initially demonstrated on four full scale F-16 A/B forward transparencies, one of which will be subject to electrostatic discharge testing by the supplier(s). . . . Each supplier shall then apply the coating system to four additional transparencies for flight testing by OO-ALC."

Revision 1 also provided at section 3.5 that the program would consist of three phases. The description of phase 3, provided that: "flight testing shall be conducted by OO-ALC using any or all of the delivered transparencies. Flight testing shall not deter implementation of the result of this program by OO-ALC." On June 1, 1993, the agency issued revision 2 to the SOW, which identified Texstars, Sierracin, and Pilkington as sources that were seeking qualification for the F-16 transparencies.

On June 2, a test plan was prepared by the lead engineer for the Lockheed Fort Worth Company for the protester's new F-16 transparency coated with its new Sierracin coating system. The test plan stated that the test procedures should meet requirements set out in specification 162K002F, dated August 1992, entitled Critical Item Development Specification for F-16 A/B/C/D/ transparencies.² The test plan stated that a substantial body of test data is available on the coating system through previous work on other programs, and that qualification through similarity

²162K002E, dated June 1987, is the underlying applicable specification which is referenced in the SOW and its subsequent revisions.

would be sought where reasonable. For example, the test plan specifically provided that binocular disparity and optical distortion would be qualified by similarity. However, the test plan for Sierracin stated that the operation temperature tolerance requirements would be qualified by flight testing.³

On June 27, 1994, the agency issued solicitation No. F42620-94-R-62019 for various quantities of F-16 C and F-16 D forward transparencies. The RFP included a "Notice of Restriction of Sources" clause. The clause provides that offers from firms that are not approved "will only be considered when it can be determined prior to award that the material or service being offered will meet the Air Force's requirement." The solicitation listed Texstars and Sierracin as the only approved sources. On July 26, the agency issued amendment No. 2 which deleted Sierracin as an approved source, added Pilkington as an approved source, and extended the closing date until August 9.

On August 2, Sierracin requested a 30-day extension to submit its proposal in order to allow for review and approval of its coating system qualification test report. The agency did not grant Sierracin's extension request but stated that its qualification package would be reviewed.

By the August 9 closing date, the agency received proposals from the two approved sources, Texstars and Pilkington, and a proposal from Sierracin. The agency determined that Pilkington's proposal was outside of the competitive range, and that Sierracin was not currently a fully qualified source and could not receive the award. In particular, the agency determined that Sierracin's F-16 transparency had not completed the humidity and sunshine tests, and required a engineering flight evaluation which was expected to take 4 to 6 months to complete and could not be waived.⁴ The

³In an affidavit provided to our Office, the engineer that prepared the Sierracin test plan states that he provided Sierracin with revision 2 of the SOW and the Lockheed test plan for its transparency in June 1993.

⁴Sierracin successfully completed the humidity and sunshine tests in a timely manner. Regarding the engineering flight evaluation test, on August 11, the agency issued revision 4 to the SOW which added Sierracin as qualified to begin the 4- to 6-month engineering flight evaluation for the transparency coating. In this regard, on September 12, the agency directed that six transparencies be sent to Sierracin for coating so that Sierracin's engineering flight evaluation could begin.

agency made award to Texstars on September 22. This protest followed.

Sierracin argues that it had completed all of the required tests to qualify as an approved source for the F-16 transparencies. Sierracin contends that the agency improperly denied it the award because it had not completed a 4- to 6-month engineering flight test that Sierracin asserts should have been performed after award.

When a contracting agency restricts a contract award to approved sources, it must give nonapproved sources a reasonable opportunity to qualify. Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2. We think the agency met its obligation. Here, while Sierracin asserts that the agency did not notify it that the engineering flight test had to be performed before Sierracin could be considered an approved source, the record makes clear that the engineering flight test was required in order to become an approved source for the F-16 transparency. The SOW put Sierracin on notice that flight testing must be completed before it could be considered an approved source. The SOW stated that the contractor should establish programs with interested sources seeking qualification as approved sources for the F-16 transparencies, and listed all of the requirements that interested sources must meet to qualify as approved sources. Revision 1 of the SOW specifically provided that the qualification program should consist of three phases, with flight testing being the final phase.

The test plan prepared by Lockheed Fort Worth Company for Sierracin also referenced flight testing. Sierracin's test plan specifically stated that the operational temperature tolerance requirements in the F-16 transparency specification would be qualified by flight testing, and that the test procedures should meet the requirements set out in the F-16 transparency specification. In this regard, specification 16ZK002E for the F-16 transparencies also states that the operational temperature test was a preproduction test. We conclude that the agency notified Sierracin that the engineering flight test was required before Sierracin could become an approved source.

Sierracin also argues that it was at a disadvantage compared to the approved sources because the Air Force delayed Sierracin's flight test. According to Sierracin, if the engineering flight test was a mandatory requirement, then the agency should have had Sierracin under contract to deliver flight hardware as soon as possible after Sierracin's successful bird impact test in May 1993. In this regard, Sierracin contends that "there is no requirement in the SOW that coating coupon qualification is required prior to flight test."

Contrary to the protester's assertion, the SOW called for flight testing as the last of three program testing phases. Therefore the agency reasonably did not begin to set up Sierracin's flight test until it had completed the required tests in phase one and two. While Sierracin successfully completed the bird impact test in May 1993, it did not complete the humidity and sunshine tests until August or September 1994. When Sierracin completed, or came close to completing, the tests listed in phase one and two of the SCW, the agency acted promptly so that Sierracin's flight testing could begin. In this regard, on August 11, the agency issued revision 4 to the SOW which added Sierracin as qualified to begin the 4- to 6-month engineering flight evaluation for the transparency coating. On September 12, the agency directed that six transparencies be sent to Sierracin for coating so that Sierracin's engineering flight evaluation could begin. Thus, once Sierracin completed the test requirements specified in phase one and two of the SOW, the Air Force promptly acted to set up Sierracin's flight test.

Next, Sierracin argues that, in the event that the flight test requirement must be met before it can become an approved source, the Air Force should accept the results that were generated from extensive flight testing of its F-18 transparency, and allow qualification by similarity for its F-16 transparency.

The agency responds that prior to this protest, Sierracin had never approached the agency about satisfying the flight testing requirements for the F-16 transparency by similarity. The agency notes that there are structural differences between the F-16 and F-18 transparencies that may cause performance differences in the protective coating, and that the F-16 and F-18 transparencies were tested differently. In addition, the F-18 flight testing is based on 425-knot canopy and the F-16 flight testing is based on a 550-knot canopy.

The agency further notes that while it allows qualification by similarity where reasonable, it has never, and does not contemplate, allowing qualification by similarity in the area of flight testing. The agency states that such qualification by similarity as has been allowed was done to minimize duplication of lab testing, not flight testing. In this regard, the agency notes that Pilkington qualified its coating on another Navy aircraft and also was required to requalify its coating on the F-16. Under the

circumstances, Sierracin's contention that it should be permitted qualification by similarity is without merit.³ This protest is denied.

Michael H. Golden
 Co-Robert P. Murphy
 General Counsel

³In a supplemental protest filed in our Office on December 23, 1994, approximately 1 month after it filed comments in this case, Sierracin first asserted that Texstars's transparencies experienced problems in flight testing and questions the propriety of the firm's qualification as an approved source. This ground of protest was based on information from a former Texstars engineer hired by Sierracin in November 1994. We dismiss this issue as untimely. Under our Bid Protest Regulations, this issue was required to be filed within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1995). Where a protester initially filed a timely protest, and later supplements it with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. Little Susitna Co., 65 Comp. Gen. 651 (1986), 86-1 CPD ¶ 560; G.H. Harlow Co., Inc.--Recon., B-245050.2; B-245051.4, Apr. 10, 1992, 92-1 CPD ¶ 357. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Id. Here, Sierracin should have become aware of problems that allegedly occurred in testing Texstars's transparencies in August and September of that year by November 1994. If Sierracin believed that Texstars should not have received the award due to those alleged testing problems, then Sierracin was required to protest within 10 working days thereafter. Its protest, filed approximately 1 month after the former Texstars's employee began working for Sierracin, is untimely and will not be considered.